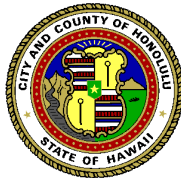


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

December 14, 2015

TO: CHAIR KATY CHEN, VICE CHAIR MICHAEL LILLY AND
MEMBERS OF THE ETHICS COMMISSION

FROM: CHARLES W. TOTTO, EXECUTIVE DIRECTOR AND LEGAL COUNSEL,
AND LAURIE A. WONG, ASSOCIATE LEGAL COUNSEL

SUBJECT: AGENDA ITEMS FOR THE DECEMBER 16, 2015 MEETING, **OPEN SESSION**

I. CALL TO ORDER

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of November 18, 2015 Meeting.
- B. Nomination and Vote for Chair and Vice Chair for Calendar Year 2016. Explanation of Holdover Process.
- C. Executive Director and Legal Counsel's Administrative Report.
 - 1. General Statistics: Complaints and Requests for Advice as of the end of last month.

REQUEST FOR ADVICE & COMPLAINTS

	Total	Responses, Referral, Withdrawn or No Action	Under Review	Under Review – Net change from last report
July 1, 2013 - June 30, 2014	489	479	10	0
FY 14 TOTAL				
July 1, 2014 – June 30, 2015	398	355	43	-4
FY 15 TOTAL				
July 1, 2015 – Nov. 30, 2016	155	106	49	N/A
FY16 TOTAL				

2. Current Fiscal Year Budget Issues.

- We have two contracts not to exceed \$10,000 each for consultants.
- Our potential contract with Letha DeCaires for investigative and training services is on hold depending on her availability.
- If we fund all three contracts, and considering previous expenses, we will have \$5,000 remaining in our budget for investigative, legal or transcription services, consultants and expert witnesses.

3. Fiscal Year 2017 Budget.

On December 14, we have our budget priority meeting with the Managing Director and the Department of Budget and Fiscal Services. I have attached as **OPEN-1** our budget priorities and justification.

4. Ethics Training Program.

- The Associate Legal Counsel continues to is prepare our web-based ethics training program for all 8,500 City personnel beginning in April 2016;
and
- We await approval from the Mayor's Office to make the board and commission member ethics training video available on-line.

5. Staff's Priorities for FY16 – FY17.

Here is a list of priorities at this time. Staff must remain flexible because much of our work is not within our control, such as the number and complexity of Requests for Advice

(RFA) and Complaints Requiring Investigation (CRI) that are submitted to us. Also, this list may change as a result of EC member comments and recommendations.

- Highest Priority:
 - Develop and conduct all-employee ethics training program;
 - Timely response to RFAs and CRIs;
 - Formulate and present Notices of Alleged Violations and contested hearings as required;
 - Seek sufficient resources through FY17 budget to support necessary EC activities;
 - Develop an operating plan with Commission; and
 - Support Charter amendment to change salary process for EC's lawyers' salaries.
- Secondary Priority:
 - Report and implement improvements to pre-hearing and hearing processes;
 - Ensure timely filings of financial disclosures and lobbying reports in January 2016; and
 - Draft and advocate on important and necessary ethics legislation.

6. Staff Communication with City Work Force.

Staff is waiting for a response from the Managing Director in order to submit our first email blast to City agencies and personnel. We hope to be sending the blast out in the next few weeks.

D. For Discussion: Contested Case Pre-Hearing and Hearing Procedures.

This item was requested By Commissioner Amano.

E. For Discussion: Potential Amendments to Commission's Rules of Procedure.

Staff requests that the Commissioners please consider the following areas of the Ethics Commission Rules of Procedure (http://www.honolulu.gov/rep/site/ethics/rules/Rule_of_Procedure.pdf) for general discussion and possible future amendment:

1. Contested case hearing procedures;
2. Allowing the use of subpoenas between the filing of the Notice of Alleged Violation and the contested case hearing;
3. Revising the Motions Rule (1.16) to conform with the Hawaii Rules of Civil Procedure or the Rules of the Circuit Courts in regard to time to respond to a motion and clarification of other wording; and
4. Any other area that any Commissioner would like to discuss.

F. For Discussion: Potential Changes to the Commission's Guidelines on Gifts.

Staff requests that the Commissioners please consider the following areas of the Guidelines on Gifts
(http://www.honolulu.gov/rep/site/ethics/publicationsandguidelines/Revised_Guidelines_on_Gifts.pdf)
for general discussion and possible future amendment:

1. Include a special section regarding gifts from lobbyists;
2. Describe how gifts such as meals will be valued when more than one person is present;
3. Describe the time during which gifts are considered to create a conflict of interest;
4. Discuss how the connection between the gift giver's interest in legislation or other city action creates a conflict of interest requiring disclosure and recusal (in the case of non-councilmembers); and
5. Any other areas that any Commissioner would like to discuss.

Should you have any questions on these matters, please contact us.

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Department: ETHICS COMMISSION

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ETH FY17 OPERATING BUDGET PRIORITIES JUSTIFICATION

1. Additional Investigator (II) or additional outside consultant/investigative resources. \$52,339 - \$60,000.

Need: Having sufficient resources to handle the high number of misconduct complaints has been a Commission priority since 2010. The number of cases investigated cannot be sustained by one ETH investigator. ETH receives an average of 90 Complaints Requiring Investigation (CRI) each year. In contrast, administrative investigators in other similar agencies are assigned an average of 22 investigations. (Based on data from the Department of Attorney General, Investigations Division, the Honolulu Police Commission and HPD's Professional Standards Office).

The average time for resolution of an ethics complaint before hearing is 5 months. This means that subjects of and witnesses to alleged misconduct must wait over 4 months before a complaint is resolved. If the complaint goes to a contested hearing before the Commission, the time for resolution is about 1 year.

Result: Additional resources will allow the Commission to reduce its backlog and to timely investigate alleged ethical misconduct. In turn, the City can promptly CLEAR subjects or CORRECT their misconduct thereby saving money for the City and raising employee efficiency and morale.

2. Catch up budget for ETH lawyers' salaries. \$4,673.

Need: Budgets for the ETH lawyers' salaries have not always included the 4% merit increase allowed in the budgets for COR, PAT or OCS. Specifically, the FY15 budget for ETH attorneys' salaries did not contain a 4% merit increase based on the EDLC's budgeted salary, although the budgets for COR, PAT and OCS did include an increase for their deputies. (In fact, the Commission awarded a 4% merit pay increase for the EDLC on Oct. 27, 2014, but it was not included in the FY15 budget.)

COR, PAT and OCS were appropriated 4% merit increase funds in each of FY15, FY16 and FY17. ETH received the 4% increase only for FY16 and FY17. ETH's 4% shortage in FY15 has been carried forward from FY15 to FY16 and FY17. As a result of the 4% shortage, the recommended FY17 ETH budget for

lawyers' salaries is \$4,673 less than it would have been if the 4% merit increase funds had been allocated in FY15.

The increase of \$4,673 will be allocated by the Commission in the same way as stated in Mayor's Directive 15-3.

Result: If the FY15 4% merit increase is not added back in to our budget, it will mean that the lawyer salaries at ETH will trail behind those for comparable positions at COR, PAT and OSC. The Commission's ability to hire and retain quality lawyers is based on being able to pay comparable salaries with other law departments. In turn, ETH salaries require full funding of merit increases.

3. Survey City personnel re ethics concerns, obtaining advice, ways to improve the City's ethics program and ethical culture. \$672.

Need: This is one of the Commission's top priorities. Such surveys are a best practice among private companies' compliance and ethics programs. Current electronic survey systems make the collection and analysis of data easy and inexpensive. After consultation, HGEA supports the program.

Result: The Commission and the City will be able to plan its ethics program based on hard data generated by City personnel. This should help the Commission direct its limited resources to the most effective ethics projects.